

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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| IN THE MATTER OF: |) | DOCKET NO. V-W-15-AO-01 |
| |) | |
| East Chicago Sanitary District |) | Proceeding under Sections 308(a) and |
| East Chicago, Indiana, |) | 309(a) of the Clean Water Act, 33 U.S.C. |
| |) | § 1318(a) and § 1319(a) |
| Respondent. |) | |
| _____ |) | |

ADMINISTRATIVE CONSENT ORDER

1. The Director of the Water Division, U.S. Environmental Protection Agency, Region 5, is issuing this Administrative Consent Order (Order) to the East Chicago Sanitary District (ECSD, the District, or Respondent) under Sections 308(a) and 309(a) of the Clean Water Act (Act), 33 U.S.C. §§ 1318(a) and 1319(a).

STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, among other things, in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
3. Section 307(b) of the Act, 33 U.S.C. § 1317(b), states "[t]he Administrator shall publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works"
4. Pursuant to 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator published "General Pretreatment Regulations for Existing and New Sources" on January 28, 1981, codified at 40 C.F.R. Part 403. By the terms of this regulation, the requirements of Part 403 became effective three years from the date of promulgation.
5. Section 307(d) of the Act, 33 U.S.C. § 1317(d), states that [a]fter the effective date of any ... pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such ... pretreatment standard."
6. Section 308(a) of the Act, 33 U.S.C. § 1318(a), provides, among other things, that whenever required to carry out the objective of this chapter, the Administrator of EPA shall require the owner or operator of any point source to: establish and maintain such

records, make such reports, and provide such other information as she may reasonably require.

7. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), states that whenever the Administrator of EPA finds a person in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), the Administrator of EPA may issue an order requiring that person to comply with the provisions of the Act and the requirements of the permit.

FINDINGS

8. The City of East Chicago (East Chicago) owns and operates a Publicly-Owned Treatment Works (POTW) located at 5201 Indianapolis Boulevard, East Chicago, Indiana (East Chicago Sanitary District Wastewater Treatment Plant). The POTW collects and treats residential, commercial, and industrial waste.
9. The Indiana Department of Environmental Management (IDEM) issued a NPDES Permit No. 0022829 (Permit) to ECSD, pursuant to Sections 402 and 405 of the Act, 33 U.S.C. § 1251, on June 24, 2011, which became effective on July 1, 2011.
10. ECSD is a "person" that "discharge[s] pollutants" to the "navigable waters" and "waters of the United States" from a "point source," as those terms are defined at Section 502 of the Act, 33 U.S.C. § 1362, and at 40 C.F.R. § 122.2.
11. 40 C.F.R. § 403.3(c) defines the term "Approval Authority" to mean the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.
12. 40 C.F.R. § 403.3(f)(1) states that the term "Control Authority" refers to the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of § 403.11.
13. EPA approved ECSD's pretreatment program on February 14, 1986. The pretreatment program and regulatory provisions for the pretreatment program are incorporated in ECSD's Permit under Part III – Requirement to Operate a Pretreatment Program. Part III states that the permittee shall operate its approved industrial pretreatment program in accordance with the included conditions and reporting requirements.
 - a. Per the definitions set forth in the General Pretreatment Regulations at 40 C.F.R. §§ 403.3(c) and (f), and as these terms are used in this Order, ECSD is the "Control Authority" and EPA is the "Approval Authority."
14. 40 C.F.R. § 403.8(f)(1) states that a POTW shall operate pursuant to legal authority enforceable in Federal, State, or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307(b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections.

- a. On March 27, 2006, the City of East Chicago adopted, passed, and enacted Ordinance No. 06-0007, "Wastewater Discharge Regulations" at Chapter 13.13 of the Municipal Code of the City of East Chicago, Indiana, hereby referred to as "Sewer Use Ordinance" or "SUO", as required by 40 C.F.R. § 403.8(f)(1).
15. 40 C.F.R. § 403.8(f)(5) requires a POTW under a Pretreatment Program to develop and implement an Enforcement Response Plan (ERP).
 - a. On August 1, 1994, EPA approved the addition of an ERP to ECSD's pretreatment program. ECSD established the ERP by the enactment of Resolution SD-94-14 on December 8, 1994, as required by 40 C.F.R. § 403.8(f)(5).
16. 40 C.F.R. § 403.3(v)(1)(i) states that a Significant Industrial User (SIU) means all Industrial Users subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and the Effluent Guidelines and Standards for Point Source Categories at 40 C.F.R. chapter I, subchapter N.¹
 - a. 40 C.F.R. chapter I, subchapter N at § 420.90 states that the provisions for the Iron and Steel Manufacturing Point Source Category, Acid Pickling Subcategory, are applicable to discharges and to the introduction of pollutants into POTWs resulting from sulfuric acid, hydrochloric acid, or combination acid pickling operations.
 - i. The National Processing Corp. facility located at 4506 W. Cline Avenue, East Chicago, Indiana, uses hydrochloric acid to pickle carbonic steel coils. It discharges pretreated wastewater from the rinsing component of the pickling process to the East Chicago sanitary sewer through Outfall 514.
 - ii. The National Processing Corp. facility operates a hydrochloric acid pickling process, as it is defined at 40 C.F.R. § 420.91, and is subject to the categorical pretreatment standards for existing sources at 40 C.F.R. § 420.95(b)(1), hydrochloric acid pickling – rod, wire, and coil.
 - b. 40 C.F.R. chapter I, subchapter N at § 465.01 states that the provisions for the Coil Coating Point Source Category are applicable to any coil coating facility or any steel can making facility that discharges pollutants to waters of the United States or that introduces pollutants to a POTW.
 - i. Electric Coating Technologies operates a steel coil coating process, as it is defined at 40 C.F.R. §§ 465.01(b) and 465.02, including both phosphating and zinc electroplating operations at its facility located at 4407 Railroad Avenue, East Chicago, Indiana. It discharges pretreated metal cleaning and plating wastewater, and cooling water to the East

¹ 40 CFR § 403.3(v)(1)(ii) further states that a Significant Industrial User also means: "Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR § 403.8(f)(6))."

Chicago sanitary sewer. The facility is subject to the categorical pretreatment standards for existing sources under the Coil Coating Category at 40 C.F.R. § 465.

- c. 40 C.F.R. chapter I, subchapter N at § 437.1(a) states that the provisions for the Centralized Waste Treatment Point Source Category, Oils Treatment and Recovery Subcategory, applies to that portion of wastewater discharges from a centralized waste treatment (CWT) facility that results from the treatment or recovery of oil from both oily wastes received from off-site and other CWT wastewater associated with the treatment or recovery of oily wastes.
 - i. The Safety Kleen System facility located at 601 Riley Road, East Chicago, Indiana, processes used oil and discharges wastewater to the East Chicago sanitary sewer through Outfall 901. The facility is subject to the categorical pretreatment standards for existing sources under the Centralized Waste Treatment Point Source Category, Oils Treatment and Recovery Subcategory, at 40 C.F.R. § 437.25.
17. Between August 27-29, 2012, an EPA team conducted an on-site pretreatment compliance inspection of the ECSD Wastewater Treatment Plant and six industrial users (IUs) (August 2012 Inspection). The August 2012 Inspection consisted of interviews with the City of East Chicago, IU file reviews, IU on-site inspections, and a review of laboratory and hauled waste procedures. The team reviewed files for the following IUs:
 - a. Central States Marketing Company
 - b. Electric Coating Technologies
 - c. ICO Polymers
 - d. Kemira
 - e. National Processing Corp. Outfall #511
 - f. National Processing Corp. Outfall #514
 - g. Safety Kleen Systems²
 - h. TradeBe Environmental Services
18. On January 28, 2013, EPA provided the inspection report and findings of the August 2012 Inspection to ECSD and requested ECSD respond to the findings in 30 days. *See* Appendix A. The report identified deficiencies in ECSD's Pretreatment Program. ECSD requested and received two 30-day extensions to the response deadline. On June 19, 2014, ECSD submitted a draft response to the PCI report. EPA and ECSD met to discuss the PCI report and draft response on June 24, 2014.
19. On March 20, 2013, EPA issued a Section 308 Information Request to ECSD. *See* Appendix B. On August 2, 2013, ECSD responded to the request in writing.
20. Based on the information provided by the City of East Chicago and IUs during the August 2012 Inspection and the information provided by the City of East Chicago on August 2, 2013, June 19, 2014, and June 24, 2014, EPA finds that East Chicago is in violation of the General Pretreatment Regulations for Existing and New Sources of Pollution at 40 C.F.R. Part 403 and its Permit as detailed below.

² An on-site inspection was not conducted at Safety Kleen Systems.

21. 40 C.F.R. § 122.44(j)(2)(ii) states that NPDES permit holders with approved pretreatment programs must provide a written technical evaluation of the need to revise local limits under 40 C.F.R. § 403.5(c)(1) following permit issuance or reissuance.
 - a. 40 C.F.R. § 403.5(c)(1) states “each POTW... shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.”
 - i. The last local limit study ECSD conducted was in 2005.
 - ii. ECSD violated 40 C.F.R. §§ 122.44(j)(2)(ii) by failing to perform a technical evaluation of the need to revise local limits following its permit reissuance in 2011.
22. ECSD SUO Article 13.13.5.02.2 states “all SIUs shall complete and file with the District a permit application therefore in the form prescribed by the District.” Article 13.13.5.02.2 additionally requires a complete permit application including disclosure of site plans, description of activities, facilities, and plant processes before issuance.
 - a. The National Processing Corp. permit application required the facility to submit a schematic flow diagram “for each major activity in which wastewater is or will be generated” for review by ECSD before ECSD issued a permit to National Processing Corp. ECSD’s file for National Processing Corp. does not contain a schematic flow diagram for the wastewater generated at the facility or any reference to the review of a schematic flow diagram.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(1) by failing to ensure that the permit application for the National Processing Corp. contained a schematic flow diagram and was otherwise complete before issuance, as required by Article 13.13.5.02.2 of ECSD’s SUO.
23. 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) states that under a Pretreatment Program, control mechanisms must contain, at a minimum, effluent limits based on applicable general Pretreatment Standards in Part 403, categorical Pretreatment Standards, local limits, and State and local law.
 - a. ECSD’s SUO Articles 13.13.3.01, General Discharge Prohibitions, and 13.13.3.02.3, Specific Pollutant Limitations, state the limits for the above pollutants are:

| Pollutant | SUO Local Limit |
|---------------------|--------------------------------|
| Cyanide | “Cyanide” 0.003 mg/L |
| Mercury (daily max) | 0.0002 mg/L |
| pH | Must not be <5 and >10 S.U. |

- b. The National Processing Outfall 514 permit issued by ECSD on August 9, 2011, contains the following effluent limits for cyanide, mercury, and pH:

| Pollutant | Permit Local Limit |
|---------------------|-----------------------------|
| Cyanide | "Cyanide (free)" 0.003 mg/L |
| Mercury (daily max) | 0.003 mg/L |
| pH | <5 and >10 S.U. |

- c. ECSD issued a permit to Safety Kleen Systems on September 7, 2006 and revised on June 30, 2009 (Safety Kleen Permit). The Safety Kleen Permit contains the following effluent limits for cyanide, and mercury:

| Pollutant | Permit Local Limit |
|---------------------|----------------------|
| Cyanide | "Cyanide (amenable)" |
| Mercury (daily max) | 0.003 mg/L |

- d. 40 C.F.R. § 136.3, Table IB, List of Approved Inorganic Test Procedures contains approved test methods for the following parameters: arsenic, cadmium, total chromium, copper, lead, molybdenum, nickel, silver, ammonia, phosphorus, fluoride, phenols, and residual chlorine. The test methods listed in the National Processing Outfall 514 permit and the Safety Kleen permit for these listed parameters are inconsistent with the approved test methods in 40 C.F.R. § 136.3, as detailed below:

| Parameter | 40 C.F.R. § 136.3, Table IB, List of Approved Inorganic Test Procedures, EPA methods ³ | National Processing Outfall 514 and Safety Kleen permits listed EPA test method |
|-------------------|---|---|
| Arsenic | 206.5 | 204.2 |
| Cadmium | 200.9, 200.5, 200.7, 200.8 | 213.2 |
| Total chromium | 200.9, 200.5, 200.7, 200.8 | 218.2 |
| Copper | 200.9, 200.5, 200.7, 200.8 | 220.2 |
| Lead | 200.9, 200.5, 200.7, 200.8 | 236.2 |
| Molybdenum | 200.5, 200.7, 200.8 | 246.2 |
| Nickel | 200.9, 200.5, 200.7, 200.8 | 249.2 |
| Silver | 200.9, 200.5, 200.7, 200.8 | 272.2 |
| Ammonia | 200.9, 200.5, 200.7, 200.8 | 250.2 |
| Phosphorous | 365.3, 365.1, 200.7, 365.4 | 365 |
| Fluoride | 300.0, 300.1-1 | 340.3 |
| Phenols | 420.1, 420.4 | 420.2 |
| Residual chlorine | 4500-CI-E-2000 (Standard Method) | 330 |

- i. ECSD violated 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) by issuing permits to National Processing Outfall 514 and Safety Kleen that are inconsistent

³ Note: this is an incomplete list, provided for reference only. Refer to 40 C.F.R. §136.3, Table IB for complete list of approved EPA test methods, standard methods, ASTM methods, USGS/AOAC/Other methods, associated revisions, and footnotes regarding each.

with approved test methods at 40 C.F.R. § 136.3 and local limits within ECSD's SUO Articles 13.13.3.01 and 13.13.3.02.3.

- e. 40 C.F.R. § 420.95(b)(1) requires any existing source subject to this subpart to achieve pretreatment standards for lead, and zinc. The National Processing Corp. Outfall 514 Permit contains effluent limits for lead, and zinc which are inconsistent with the categorical Pretreatment Standards at 40 C.F.R. § 420.95(b)(1), as detailed below:

| Parameter | Categorical Pretreatment Standards at 40 C.F.R. § 420.95(b)(1), lb/1000 lb product | | National Processing Corp. Outfall 514 permit limit, lb/1000 lb product | |
|------------------|---|------------------------------|---|------------------------------|
| Lead | 0.000920 daily max | 0.000307 avg. for 30 days | 0.000526 daily max | 0.000175 avg. for 30 days |
| Zinc | 0.00123 daily max | 0.000409 avg. for 30 days | 0.000701 daily max | 0.000234 avg. for 30 days |

- i. In a letter dated August 9, 2004, ECSD notified National Processing Corp. that Outfall 514 is subject to the categorical limits under 40 C.F.R. § 420.95(b)(1). The National Processing Corp. Outfall 514 permit issued on August 9, 2011 does not explicitly identify the facility as a CIU, and incorrectly cites categorical limits for the hydrochloric acid pickling – strip, sheet, and plate category at 40 C.F.R. § 420.95(b)(2) instead of the more appropriate category of hydrochloric acid pickling – rod, wire, and coil found at 40 C.F.R. § 420.95(b)(1).
- ii. ECSD violated 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) by issuing a permit to National Processing Corp. Outfall 514 which is inconsistent with categorical Pretreatment Standards at 40 C.F.R. § 420.95(b)(1).
- f. 40 C.F.R. § 437.25 requires any existing source subject to this subpart to achieve pretreatment standards for lead, tin, bis(2-ethylhexyl) phthalate, carbazole, n-decane, fluoranthene, and n-octadecane, among others. The Safety Kleen Permit does not contain effluent limits for tin, carbazole, n-decane, and n-octadecane. The Safety Kleen Permit contains effluent limits for lead, bis(2-ethylhexyl) phthalate, and fluoranthene which are inconsistent with the categorical Pretreatment Standards at 40 C.F.R. § 437.25, as detailed below:

| Parameter | Categorical Pretreatment Standards at 40 C.F.R. § 437.25 | Safety Kleen permit limit |
|-----------------------------|---|----------------------------------|
| Lead | 0.222 mg/L, daily max | 0.224 mg/L |
| Bis(2-ethylhexyl) phthalate | 0.267 mg/L, daily max | 1.03 mg/L |
| Fluoranthene | 0.787 mg/L, daily max | 0.69 mg/L |

- i. ECSD violated 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) by issuing a permit to Safety Kleen Systems which is inconsistent with categorical Pretreatment Standards at 40 C.F.R. § 437.25.
- 24. 40 C.F.R. § 403.8(f)(2) states that, under a POTW Pretreatment Program, a POTW shall implement procedures to ensure compliance with the requirements of a Pretreatment Program.
 - a. 40 C.F.R. § 403.5(b)(3) prohibits solid or viscous pollutants in amounts that will cause obstruction to the flow in the POTW and result in interference with the operation of the wastewater system.
 - b. ECSD SUO Section 13.13.3.01(b) prohibits “solids or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater system.”
 - c. During the August 2012 Inspection of the ICO Polymers facility, EPA observed red plastic pellets in the trench leading to the discharge point, and around, in, and past the discharge point to the POTW.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2) by failing to implement procedures to ensure compliance with their Pretreatment Program requirements. ECSD failed to identify the conditions and operations at the ICO Polymers facility involving solid plastic pellets in the trench at the discharge point to the POTW that may cause obstruction to the flow in the POTW and result in interference with the operation of the wastewater system and prohibited by Section 13.13.3.01(b) of ECSD’s SUO and 40 C.F.R. § 403.5(b)(3).
 - ii. ECSD violated 40 C.F.R. § 403.8(f)(1) by failing to take appropriate enforcement action pursuant to its legal authority under the SUO in response to ICO Polymer’s noncompliance.
 - d. 40 C.F.R. § 403.8(f)(2)(vi) requires that if the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the elements listed at 40 C.F.R. § 403.8 (f)(2)(vi)(A)-(D): (A) description of discharge practices, including non-routine batch Discharges; (B) description of stored chemicals; (C) procedures for immediately notifying the POTW of Slug Discharges, including any Discharge that would violate a prohibition under §403.5(b) with procedures for follow-up written notification within five days; and (D) if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
 - e. Safety Kleen Systems’ slug control plan does not contain the elements required by 40 C.F.R. § 403.8 (f)(2)(vi)(A)-(D).
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2) by failing to implement procedures to ensure Safety Kleen Systems’ slug control plan contained the elements required at 40 C.F.R. § 403.8 (f)(2)(vi)(A)-(D), listed above.

25. 40 C.F.R. § 403.8(f)(2)(i) states that, under a POTW Pretreatment Program, a POTW shall implement procedures that enable it to identify and locate all possible IUs that might be subject to the POTW Pretreatment Program.
- a. 40 C.F.R. § 403.8(f)(6) requires the POTW to prepare and maintain a list of its IUs that meet the criteria in § 403.3(v)(1), which defines SIUs and those subject to Categorical Pretreatment Standards, identified as CIUs.
 - b. 40 C.F.R. § 403.12(i)(1) requires POTWs with approved Pretreatment Programs to provide the Approval Authority with a report "...no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, [which] shall include... (1) an updated list of the POTW's IUs... or a list of deletions and additions keyed to a previously submitted list...."
 - c. During the August 2012 Inspection, ECSD staff stated to an EPA representative that ECSD has not conducted activities to identify new industrial user businesses within at least the last five years, nor does it maintain a list of the status of potential nondomestic dischargers or businesses that have been evaluated and deemed nonindustrial.
 - i. ECSD violated 40 C.F.R. §§ 403.8(f)(2)(i), 403.8(f)(6), and 403.12(i)(1) by failing to develop and implement procedures for identifying and locating all possible IUs, and to maintain an updated list of the POTW's IUs in its annual reports.
26. 40 C.F.R. § 403.8(f)(2)(ii) states that, under a POTW Pretreatment Program, a POTW shall implement procedures that enable it to identify the character and volume of pollutants contributed to the POTW by identified IUs.
- a. The ECSD inspection report dated November 15, 2011 for National Processing Corp. failed to list the chemicals used in the neutralization process, to describe the removal of solids, or to describe the addition of polymers, which enhance solids settling in the National Processing Corp. process.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2)(ii) by not fully evaluating the National Processing Corp. facility's operations, and failing to implement procedures that would enable it to identify the character and volume of pollutants National Processing Corp. contributes to the POTW.
 - b. During the August 2012 Inspection, ECSD's file for Electric Coating Technologies did not contain information regarding components of the facility including, but not limited to: ownership, waste flows, and the identification of tanks used for the storage of process and waste liquids.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2)(ii) by not having the information necessary, and failing to implement procedures, to identify the character and volume of pollutants that Electric Coating Technologies contributes to the POTW.
27. 40 C.F.R. § 403.8(f)(2)(v) states that a POTW shall implement procedures to ensure compliance with the requirements of a Pretreatment Program and, at a minimum, inspect and sample the effluent from each SIU at least once a year.

- a. ECSD Permit No. 0022829 Part III.A.3. states “the Control Authority (CA) is required to conduct inspection, surveillance, and monitoring activities to determine SIU compliance status with the approved program and the SUO independent of data supplied by the SIU. ...SIUs will be inspected once per year, at a minimum.”
 - b. ECSD’s ERP Section 4.04, Data Examination/Evaluation states that on a periodic basis, the Pretreatment Staff evaluates the industrial data to identify violations of any limitation specified in the User’s Wastewater Discharge Permit or in Section 3.02.2 of the Ordinance. In addition, the violations are examined to determine the extent to which they contribute to the violation of a Categorical Pretreatment Standard monthly average.
 - c. 40 C.F.R. § 403.5(c)(1) states that each POTW with a Pretreatment Program shall develop and enforce specific limits to implement prohibitions listed in paragraphs (a)(1) and (b) of this section. 40 C.F.R. § 403.5(d) states that where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c), such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.
 - i. ECSD’s SUO Article 13.13.3.02.3, passed and adopted by the City of East Chicago on March 13, 2007, identifies specific pollutant limitations for the following parameters: arsenic, cadmium, total chromium, copper, cyanide, lead, mercury, molybdenum, nickel, silver, thallium, zinc, fluoride, phenols, oil and grease, residual chlorine, fluoranthene, bis (2-ethylhexyl) phthalate, ammonia, and phosphorus.
 - d. In 2011, ECSD failed to sample at National Processing Corp. Outfall 514 for the following local limit parameters: molybdenum and residual chlorine.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2)(v) and Permit No. 0022829 Part III.A.3. by failing to sample the effluent from National Processing Corp. Outfall 514 for all required parameters in 2011 to ensure compliance with their Pretreatment Program requirements.
 - ii. ECSD violated 40 C.F.R. § 403.8(f)(1) by failing to operate pursuant to its legal authority under the SUO and ERP.
 - e. In 2011, ECSD failed to sample at Safety Kleen Systems for the following local limit parameters: molybdenum and residual chlorine; and the following Categorical parameters: cobalt, tin, carbazole, n-decane, and n-octadecane.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2)(v) by failing to sample the effluent from Safety Kleen Systems for all required parameters in 2011 to ensure compliance with their Pretreatment Program requirements.
 - ii. ECSD violated 40 C.F.R. § 403.8(f)(1) by failing to operate pursuant to its legal authority under the SUO and ERP.
28. 40 C.F.R. § 403(f)(2)(vii) states that the POTW shall implement procedures that allow it to investigate instances of noncompliance with Pretreatment Standards and Requirements.
- a. In their August 2, 2013 response to the 308 Information Request issued by EPA on March 20, 2013, ECSD reported 149 instances of effluent limit exceedances of

- free cyanide and 24 instances of effluent limit exceedances of *E. coli* from January 3, 2008, through November 30, 2012.
- b. The effluent limit exceedances in Paragraph 28a. are in violation of Permit Conditions I.A.1. and 3.
 - c. During the August 2012 Inspection, ECSD representatives stated to EPA representatives that ECSD does not conduct trunk line monitoring in the system to identify sewer sheds with the heaviest loads in order to conduct point source monitoring and inspections.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2)(vii) by failing to investigate instances of noncompliance with free cyanide and *E. coli* Pretreatment Standards and Requirements
29. 40 C.F.R. § 403.8(f)(2)(viii) requires a POTW under a POTW Pretreatment Program to “[c]omply with the public participation requirements of 40 C.F.R. Part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of IUs which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements,” where significant noncompliance is defined in paragraphs (f)(2)(viii)(A)-(H) of this section.
- a. ECSD’s SUO Article 13.13.6.07 and ERP Section 6.01.b.iv each state that “a list of all IUs which were, at any time during the preceding 12 months, in Significant Non-Compliance ...shall be published annually...”
 - b. As detailed in Appendix C of this Order, ECSD’s SIU sampling data from January 2011 to June 2012 indicates that the following SIUs meet the significant noncompliance criteria defined in 40 C.F.R. §§ 403.8(f)(2)(viii)(A) and (B): WBGCR Roxana Marsh 1 & 2; Praxair, Inc. Production; Mittal Steel in Harbor East; Mittal Steel in Harbor West; Kemira Water Solutions; United Transportation Group; and Safety Kleen Systems.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(2)(viii) by failing to publish a public notice pursuant to SUO Article 13.13.6.07 and ERP Section 6.01.b.iv regarding the significant noncompliance of the following SIUs: WBGCR Roxana Marsh 1 & 2; Praxair, Inc. Production; Mittal Steel in Harbor East; Mittal Steel in Harbor West; Kemira Water Solutions; United Transportation Group; and Safety Kleen Systems.
 - ii. ECSD violated 40 C.F.R. § 403.8(f)(1) by failing to operate pursuant to its legal authority when it failed to publish a list of all IUs which were at any time... in significant noncompliance, as required by ECSD’s SUO Article 13.13.6.07 and ERP Section 6.01.b.iv.
30. An EPA audit dated June 2004 highlighted a deficiency in ECSD’s dedicated pretreatment program resources. On January 7, 2010, IDEM provided ECSD with an Inspection Summary/Violation Letter as a result of its November 17 and 18, 2008, on-site pretreatment audit. In this letter and attached report, IDEM identified that ECSD’s pretreatment program was understaffed due to its inability to effectively enforce against

its users that are in noncompliance and due to a lack of pretreatment staff training opportunities.

- a. 40 C.F.R. § 403.8(f)(3) states that under a POTW Pretreatment Program, a POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section.
 - i. At the time of the August 2012 Inspection, ECSD did not have sufficient resources or qualified personnel to carry out the authorities and procedures described in 40 C.F.R. §§ 403.8(f)(1) and (2) of this section.
 - ii. ECSD violated 40 C.F.R. § 403.8(f)(3) by failing to have sufficient resources and qualified personnel to carry out the authorities and procedures described in 40 C.F.R. §§ 403.8(f)(1) and (2).
31. 40 C.F.R. § 403.8(f)(5) requires a POTW under a Pretreatment Program to implement an enforcement response plan in response to instances of industrial user noncompliance. 40 C.F.R. § 403.8(f)(5)(ii) states the plan shall at a minimum describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of IU violations and the time periods within which ECSD will take an enforcement response.
- a. As detailed in Appendix D of this Order, ECSD's SIU sampling data from January 2011 through June 2012 indicates 120 effluent exceedances of the following parameters: mercury; fluoride; arsenic; copper; pH; chromium; fats, oil, and grease; lead; nickel; phenol; phosphorus; zinc; ammonia; and total phosphorus; at the following SIUs: WBGCR Roxana Marsh 1 & 2; National Processing Corp.; United Transportation Group; Praxair, Inc.; Mittal Steel East Research Lab; Kemira Water Solutions; Safety Kleen Oil Recovery Co.; Mittal Steel in Harbor West; United States Steel Corporation; and U.S. Gypsum.
 - b. ECSD's ERP Appendix A, Section II, Table B recommends that ECSD respond to recurring exceedances of local or federal standards by issuing an administrative order and involving additional personnel beyond the Pretreatment Coordinator.
 - c. ECSD issued eight Notices of Violation in connection with the 120 effluent violations identified in Paragraph 31a., above, but failed to issue even a single administrative order for any of the recurring effluent exceedances and failed to involve higher ranking members of the ECSD staff to enforce the ERP.
 - i. ECSD violated 40 C.F.R. § 403.8(f)(5) when it failed to implement the escalating enforcement responses recommended in its ERP to ensure compliance with the Pretreatment Program requirements in response to the effluent exceedances set forth in Paragraph 31a.
32. 40 C.F.R. § 403.12(o)(2) requires any IU or POTW subject to the reporting requirements established in this section to retain any records of monitoring activities and results for a minimum of three years, and shall make such records available for inspection and copying by the Director and the Regional Administrator.
- a. Permit Condition I.B.8. states all records and information resulting from the monitoring activities required by this permit... shall be retained for a minimum of three years.

- i. At the time of the August 2012 Inspection, ECSD violated Permit Condition I.B.8. and 40 C.F.R. § 403.12(o)(2) because it was unable to produce records of the self-monitoring information required to be submitted by all IUs subject to a categorical Pretreatment Standard under 40 C.F.R. § 403.12(e)(1) and SUO Article 13.13.5.03.2.
33. ECSD violated its NPDES Permit No. 0022829 Part III Conditions by failing to operate its approved industrial pretreatment program according to its NPDES Permit No. 0022829 Part III Conditions as set forth above in Paragraphs 21 through 32.

COMPLIANCE REQUIREMENTS

34. Respondent shall comply with the provisions of Section 301 of the Act, 33 U.S.C. § 1311(a), by complying with the pretreatment requirements specified in Part III of its NPDES permit.
35. Respondent shall comply with the provisions of 40 C.F.R. Part 403.
36. Within 120 days of this Order, ECSD shall identify the source(s) of cyanide in its collection system, described in Paragraph 28 above. Within 30 days of identifying the source(s), ECSD shall submit a written summary of its findings to EPA.
37. Within 120 days of this Order, ECSD shall draft written investigative procedures provisions for regular sewer monitoring that will allow ECSD to identify the source(s) of future instances of noncompliance in its collection system.
38. Within 120 days of the date of this Order, ECSD shall develop a written, detailed approach that supports enforcement escalation and the assessment of civil and criminal penalties to noncompliant industrial dischargers as a component of a revised ERP.
39. Within 150 days of this Order, ECSD shall incorporate the changes to its SUO and ERP as detailed in Paragraph 38 above and those referenced in EPA's initial review of the requested SUO and ERP modifications, detailed in the September 27, 2011 correspondence. *See Attachment A.* ECSD shall submit the revised draft SUO and ERP to EPA within 210 days of this Order. ECSD shall continue to respond to EPA's correspondence until its SUO and ERP receive final approval by EPA.
40. Within 90 days of the date of this Order, ECSD shall acquire for each IU current, comprehensive, and accurate schematic flow diagrams for each major activity in which wastewater is or will be generated.
41. Within 210 days of the date of this Order, ECSD shall complete the review, correction, and re-issuance of all IU permits. The re-issued permits shall include the required elements under 40 C.F.R. § 403.8(f)(1)(iii)(B) and shall identify explicitly at least the following:
 - a. Current facility owner;

- b. Process description which identifies the character and volume of pollutants, per Paragraph 26 of this Order;
- c. Effluent limits consistent with applicable general Pretreatment Standards in Part 403, categorical Pretreatment Standards, local limits, and State and local law;
- d. Appropriate categorical processes, if applicable. Each permit shall specifically state which facility process or processes led to its categorization;
- e. EPA-approved sampling methods consistent with 40 C.F.R. § 136;
- f. Periodic compliance reporting requirements consistent with 40 C.F.R. § 403.12(e); and
- g. Necessity for a slug control plan evaluation conducted per 40 C.F.R. § 403.8(f)(2)(vi).

Within 7 days of re-evaluation and drafting of a new permit, ECSD shall submit the re-evaluated permit to EPA.

- 42. For each IU that ECSD determines requires a slug discharge control plan under Paragraph 41g. above, ECSD shall ensure the plan contains the elements required under 40 C.F.R. § 403.8 (f)(2)(vi). Within 7 days of receiving a slug discharge control plan from an IU, ECSD shall submit the plan to EPA.
- 43. Within 120 days of the effective date of this Order, ECSD shall develop and submit to EPA an evaluation checklist that clearly addresses:
 - a. Whether an IU discharges substances violating the general and specific prohibitions at 40 C.F.R. § 403.5; and
 - b. Whether the IU requires a slug discharge control plan, per 40 C.F.R. § 403.8(f)(2)(vi).
- 44. Within 120 days of the effective date of this Order, ECSD shall create and begin implementation of a plan to conduct an annual inspection and perform all required and applicable compliance sampling for each of its identified SIUs. Within 7 days of its creation, ECSD shall submit the inspection and sampling plan to EPA. For all inspections performed after the creation of the inspection and sampling plan, and within 60 days of completion of the sampling, ECSD shall submit to EPA a copy of the inspection report (as required by 40 C.F.R. § 403.8(f)(2)(v)) for each SIU inspection. Each report must include the information ECSD used to determine the character and volume of the SIU's discharge including, but not limited to, the following:
 - a. Description of process and waste storage tanks;
 - b. Details of pretreatment process; and
 - c. Average and maximum wastewater flow rates.
- 45. As of the effective date of this Order, ECSD shall collect and maintain consistently with Permit Condition I.B.8. and 40 C.F.R. § 403.12(o)(2) all self-monitoring data for its CIUs. Within 7 days of receipt of the data from its CIUs, ECSD shall submit this data to EPA.
- 46. ECSD shall submit to EPA an annual written summary of sample analysis data for the SIUs beginning with the next quarterly report after the effective date of this Order,

detailed in Paragraph 50 below, and continuing annually until informed in writing by EPA that Respondent may cease sending such written reports.

47. Within 120 days of the date of this Order, ECSD shall determine the additional resources (including staffing and funding) it needs to operate its pretreatment program consistent with 40 C.F.R. § 403.8(f)(3). The determination shall be based upon the October 1983 EPA document *Procedures Manual for Reviewing a POTW Pretreatment Program Submission*.
 - a. Within 45 days of completing its resource review, ECSD shall submit a detailed written summary of its determination to EPA.
 - b. Within one year after EPA's receipt of ECSD's determination, ECSD shall acquire the additional resources and personnel deemed necessary to perform consistently with 40 C.F.R. § 403.8(f)(3) its pretreatment program responsibilities.
48. As of the effective date of this Order, ECSD shall carry out enforcement actions in accordance with its ERP. When ECSD identifies recurring violations, it must escalate its enforcement response.
49. Within 90 days of the effective date of this Order, ECSD shall better organize its IU files. Each file must be clearly labeled and complete. Notwithstanding the following requirements, an electronic file storage system may be used in tandem and/or as an equivalent substitute for maintaining its IU files. Each file should contain any and all supplemental process information (including attachments) and clearly labeled and complete sub files including, but not limited to sub files for the following categories:
 - a. Permit/permit application;
 - b. Inspection;
 - c. District monitoring;
 - d. Self-monitoring; and
 - e. Enforcement.
50. The Respondent shall submit a written report to EPA on the status of the completion of each item identified in the Order on a quarterly basis (January-March, April-June, July-September, and October-December), beginning on the first day of the month of the next calendar quarter following the effective date of the Order, and continuing until informed in writing by EPA that Respondent may cease sending such written reports. Reports will be due on the last day of the month following the last month of each calendar quarter.

SUBMITTALS

51. Respondent must submit all information required by this Order to EPA at this address:

U.S. Environmental Protection Agency, Region 5
Water Enforcement and Compliance Assurance Branch (WC-15J)
Attn: Michelle Heger
77 West Jackson Boulevard
Chicago, Illinois 60604

52. Respondent must submit all information required by this Order under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

53. If the signatory finds that any portion of the submittal is false or incorrect, the signatory must notify EPA immediately. Knowing submission of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the Act, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.
54. Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Effluent data, as defined in 40 C.F.R. § 2.302(a)(2), and information in permit applications is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. 40 C.F.R. § 122.7.
55. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.
56. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

GENERAL PROVISIONS

57. EPA and Respondent recognize that this Order has been negotiated in good faith and that neither consenting to the terms of this Order, nor the actions undertaken by Respondent in accordance with this Order, constitutes an admission of liability.
58. Respondent consents to the terms of this Order and further agrees that it will not contest the basis or validity of this Order. Respondent agrees that the EPA has jurisdiction to issue this Order and further agrees that it will not contest EPA's jurisdiction to issue this Order.
59. Respondent reserves the right to contest any future enforcement activity brought by EPA against Respondent, including but not limited to any future enforcement activity that seeks civil penalties and arises out of violations of pretreatment regulations that EPA may allege occurred before the effective date of this Order, or any alleged noncompliance with this Order. Respondent waives its right to contest liability for the violations alleged in this Order in any action brought by EPA that seeks penalties for alleged violations of this Order.
60. The terms of this Order are binding on Respondent, its assignees and successors. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.
61. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.
62. Respondent must ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order within 14 days after either the Effective Date of this Order or after the date of such retention. Respondent will be responsible for any noncompliance with this Order.
63. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Administrative Consent Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C §§701-708.
64. This Order is not a permit under the Act and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, State or local laws, regulations, ordinances, permits, or licenses.
65. EPA reserves all rights and remedies available, legal and equitable, to address any violation cited in this Order and any other violation of the Act, and to enforce this Order.

Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, for the violations cited in this Order, for any other violations of the Act committed by Respondent, or to enforce this Order.

66. Issuance of this Order does not affect the EPA's authority to seek additional information under Section 308 of the Act, 33 U.S.C. § 1318, or otherwise affect the EPA's ability to enforce or implement the Clean Water Act.
67. The Act includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the Act. Specifically, EPA may:
 - a. Assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$16,000 per day for each violation that occurred after January 12, 2009. An administrative penalty action may seek up to \$177,500 for violations occurring after January 12, 2009 through December 6, 2013, and up to \$187,500 for violations occurring after December 6, 2013;
 - b. Seek civil injunctive relief and penalties for violations of the Act under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. U.S. EPA may seek civil judicial penalties of \$37,500 per day for each violation occurring after January 12, 2009; and
 - c. Seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the Act under 33 U.S.C. § 1319(c).
68. This Order shall become effective upon the signature of both parties.

CERTIFICATION OF COMPLETION

1. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent must submit to EPA a written certification of completion summarizing all actions taken to comply with all requirements of this Order.
2. After review of Respondent's certification of completion, EPA will notify Respondent whether it has satisfied all requirements of this Order.
3. This Order will terminate when Respondent receives notification from EPA that it has satisfied all requirements of this Order.

Signed:



Miguel Rivera
President
East Chicago Sanitary District Board of Commissioners

Date

12-18-14



Tinka G. Hyde
Director, Water Division
U. S. Environmental Protection Agency
Region 5

Date

12/24/14